

AMENDED IN SENATE MARCH 22, 2011

**SENATE BILL**

**No. 799**

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**Introduced by Senator Negrete McLeod**

February 18, 2011

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An act to amend Section 1420 of, and to add Section 1428.3 to, of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 799, as amended, Negrete McLeod. Long-term care.

Existing law establishes the State Department of Health Care Services and sets forth its powers and duties, including, but not limited to, *provides for* the licensing and regulation of health facilities, with certain exceptions by the State Department of Public Health.

Existing law, the Long-Term Care, Health, Safety, and Security Act of 1973, in part, requires the department to investigate complaints relating to long-term health facilities, as defined.

This bill would require the department, with certain exceptions, to complete its investigation within 90 working days. The bill would require the department to assess its compliance with this requirement in prescribed annual reports to the Legislature.

Existing law authorizes a complainant who is dissatisfied with the department's inspection or investigation to, within 5 business days, notify the director in writing of his or her request for an informal conference.

This bill would change that time period from 5 business days to 15 working days.

Existing law requires a miniexit conference to be held with the administrator or his or her representative upon leaving the facility at

the completion of the investigation to inform him or her of the status of the investigation.

This bill would, instead, require a minixit conference to be held upon leaving the facility and at the completion of the investigation.

~~This bill would require the department, or its designee, to conduct a citation review conference within 60 working days of the facility request, and require the hearing officer to issue the decision within 30 working days of the citation review conference. The bill would require the department to contract with prescribed entities for the conduct of the hearings, if it is unable to meet these timeframes.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1420 of the Health and Safety Code is  
2     amended to read:  
3     1420. (a) (1) Upon receipt of a written or oral complaint, the  
4     state department shall assign an inspector to make a preliminary  
5     review of the complaint and shall notify the complainant within  
6     two working days of the receipt of the complaint of the name of  
7     the inspector. Unless the state department determines that the  
8     complaint is willfully intended to harass a licensee or is without  
9     any reasonable basis, it shall make an onsite inspection or  
10    investigation within 10 working days of the receipt of the  
11    complaint. In any case in which the complaint involves a threat of  
12    imminent danger of death or serious bodily harm, the state  
13    department shall make an onsite inspection or investigation within  
14    24 hours of the receipt of the complaint. In any event, the  
15    complainant shall be promptly informed of the state department's  
16    proposed course of action and of the opportunity to accompany  
17    the inspector on the inspection or investigation of the facility. Upon  
18    the request of either the complainant or the state department, the  
19    complainant or his or her representative, or both, may be allowed  
20    to accompany the inspector to the site of the alleged violations  
21    during his or her tour of the facility, unless the inspector determines  
22    that the privacy of any patient would be violated thereby.  
23    (2) When conducting an onsite inspection or investigation  
24    pursuant to this section, the state department shall collect and

1 evaluate all available evidence and may issue a citation based  
2 upon, but not limited to, all of the following:

3 (A) Observed conditions.

4 (B) Statements of witnesses.

5 (C) Facility records.

6 (3) The department shall complete its investigation within 90  
7 working days from receipt of the complaint and the department  
8 shall issue a citation within the mandatory timeframes established  
9 pursuant to Section 1423, including, but not limited to, serving the  
10 citation upon the licensee within three days after completion of  
11 the investigation, excluding Sundays and holidays, unless the  
12 licensee agrees in writing to an extension of time. The  
13 90-working-day period may be extended if the department has  
14 exercised reasonable diligence in attempting to, but has not been  
15 able to, obtain all necessary evidence related to the investigation.  
16 The department shall analyze its compliance with this requirement  
17 in its annual system and staffing analysis prepared pursuant to  
18 subparagraph (B) of paragraph (2) of subdivision (d) of Section  
19 1266.

20 (4) Within 10 working days of the completion of the complaint  
21 investigation, the state department shall notify the complainant  
22 and licensee in writing of the department's determination as a  
23 result of the inspection or investigation.

24 (b) Upon being notified of the state department's determination  
25 as a result of the inspection or investigation, a complainant who  
26 is dissatisfied with the state department's determination, regarding  
27 a matter which would pose a threat to the health, safety, security,  
28 welfare, or rights of a resident, shall be notified by the state  
29 department of the right to an informal conference, as set forth in  
30 this section. The complainant may, within 15 working days after  
31 receipt of the notice, notify the director in writing of his or her  
32 request for an informal conference. The informal conference shall  
33 be held with the designee of the director for the county in which  
34 the long-term health care facility which is the subject of the  
35 complaint is located. The long-term health care facility may  
36 participate as a party in this informal conference. The director's  
37 designee shall notify the complainant and licensee of his or her  
38 determination within 10 working days after the informal conference  
39 and shall apprise the complainant and licensee in writing of the  
40 appeal rights provided in subdivision (c).

(c) If the complainant is dissatisfied with the determination of the director's designee in the county in which the facility is located, the complainant may, within 15 days after receipt of this determination, notify in writing the Deputy Director of the Licensing and Certification Division of the state department, who shall assign the request to a representative of the Complainant Appeals Unit for review of the facts that led to both determinations. As a part of the Complainant Appeals Unit's independent investigation, and at the request of the complainant, the representative shall interview the complainant in the district office where the complaint was initially referred. Based upon this review, the Deputy Director of the Licensing and Certification Division of the state department shall make his or her own determination and notify the complainant and the facility within 30 days.

(d) Any citation issued as a result of a conference or review provided for in subdivision (b) or (c) shall be issued and served upon the facility within three working days of the final determination, unless the licensee agrees in writing to an extension of this time. Service shall be effected either personally or by registered or certified mail. A copy of the citation shall also be sent to each complainant by registered or certified mail.

(e) A miniexit conference shall be held with the administrator or his or her representative upon leaving the facility and at the completion of the investigation to inform him or her of the status of the investigation. The department shall also state the items of noncompliance and compliance found as a result of a complaint and those items found to be in compliance, provided the disclosure maintains the anonymity of the complainant. In any matter in which there is a reasonable probability that the identity of the complainant will not remain anonymous, the state department shall also notify the facility that it is unlawful to discriminate or seek retaliation against a resident, employee, or complainant.

(f) For purposes of this section, "complaint" means any oral or written notice to the state department, other than a report from the facility of an alleged violation of applicable requirements of state or federal law or any alleged facts that might constitute such a violation.

~~SEC. 2.— Section 1428.3 is added to the Health and Safety Code, to read:~~

1     ~~1428.3.— (a) If the licensee desires to contest a citation or the~~  
2 ~~proposed assessment of a civil penalty therefor pursuant to Section~~  
3 ~~1428, the department, or its designee, shall conduct a citation~~  
4 ~~review conference within 60 working days from the date of the~~  
5 ~~facility's request for a citation review conference. The hearing~~  
6 ~~officer shall issue the decision within 30 working days of the~~  
7 ~~citation review conference.~~

8     ~~(b) If the department cannot meet the timeframes required under~~  
9 ~~subdivision (a), the department shall contract with either the Office~~  
10 ~~of Administrative Hearings, an entity that has been designated as~~  
11 ~~a Medicare Quality Improvement Organization, or another state~~  
12 ~~agency to ensure that citation review conferences are conducted~~  
13 ~~within 60 working days from the date of the facility's request.~~

14     ~~(c) From the amounts collected for facility license fees pursuant~~  
15 ~~to Section 1266, the department may, upon appropriation by the~~  
16 ~~Legislature, transfer an amount necessary to cover the cost of~~  
17 ~~having another state agency conduct the citation review conference~~  
18 ~~hearings.~~

19     ~~(d) In its annual system and staffing analysis prepared pursuant~~  
20 ~~to subparagraph (B) of paragraph (2) of subdivision (d) of Section~~  
21 ~~1266, the department shall analyze its compliance with subdivision~~  
22 ~~(a) and the outcome of contested citations at the hearings,~~  
23 ~~including, but not limited to, the number of citations that have~~  
24 ~~been upheld, modified, and dismissed, aggregated by class of~~  
25 ~~citation.~~